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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA  
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12                  ALLSTATE INDEMNITY COMPANY, an  
13                  Illinois corporation,

14                  Plaintiff,

15                  v.

16                  JOSHUA CORNELSON, JANE DOE  
17                  CORNELSON, and JOAQUIN ORTEGA  
18                  CARRILLO,

19                  Defendants.

20                  CASE NO. 21-5831 RJB

21                  ORDER ON MOTION TO DISMISS  
22                  FOR LACK OF TRIBAL COURT  
23                  EXHAUSTION AND FOR  
24                  VOLUNTARY DISMISSAL OF  
25                  “JANE DOE” CORNELSON

26                  This matter comes before the Court on Defendants Joshua Cornelson’s and Jane Doe  
27                  Cornelson’s (collectively “Cornelsons”) Motion to Dismiss for Lack of Tribal Court Exhaustion  
28                  (Dkt. 28) and Allstate Indemnity Company’s (“Allstate”) Motion for Voluntary Dismissal  
29                  pursuant to FRCP 41(a)(2) as to Defendant “Jane Doe” Cornelson Only (Dkt. 33). The Court  
30                  has considered the pleadings filed in support of and in opposition to the motions and the file  
31                  herein.

32                  Plaintiff Allstate Indemnity Company (“Allstate”) filed this declaratory action on  
33                  November 11, 2021, asserting that this Court has jurisdiction pursuant to the diversity of the  
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1 parties' citizenship and the amount in controversy under 28 U.S.C. § 1332. Dkt. 1. At the time  
2 of the relevant events, Allstate's insurance policy, issued to Mr. Cornelson on a manufactured  
3 home, was in effect. Dkt. 1-2. The home is the residence of both the Cornelsons, who are  
4 married, and is alleged to be on lands of the Lower Elwha Klallam Tribe ("Tribe"). Dkt. 29-1, at  
5 2. Mrs. Cornelson is alleged to be an enrolled member of the Tribe. *Id.* Mr. Cornelson is not a  
6 tribal member.

7       The Cornelsons now move to dismiss (or stay) this case, asserting that Allstate has not  
8 exhausted its remedies in tribal court. Dkt. 28.

9       After the Cornelson's motion to dismiss was filed, Allstate filed its motion to voluntarily  
10 dismiss Mrs. Cornelson. Dkt. 33. While the Cornelsons don't oppose dismissal of her from this  
11 case, they question Allstate's timing and point out that the Tribal Court case still seeks a decision  
12 for the Cornelsons' marital community. Dkt. 41. Allstate replies and objects to the Cornelsons'  
13 discussion of the Tribal Court issues. Dkt. 42. Allstate's motion (Dkt. 33) is unopposed and  
14 should be granted without further analysis. Allstate's claims against Mrs. Cornelson should be  
15 dismissed without prejudice.

16       For the reasons provided below, the Cornelson motion to dismiss (Dkt. 28) should be  
17 granted, in part, and denied, in part.

18                   **I.       BACKGROUND FACTS AND PROCEDURAL HISTORY**

19       Joaquin Ortega Carrillo (also a defendant here) filed a complaint in Clallam County,  
20 Washington Superior Court alleging that Mr. Cornelson assaulted and battered him on  
21 September 14, 2018. *Ortega v. Cornelson*, Clallam County Superior Court case number 21-2-  
22 00485-05 ("underlying case"). The assault and battery are alleged to have occurred at the  
23 driveway/yard of the Cornelsons' home. *Id.* Mr. Ortega Carrillo send a letter to Allstate  
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1 demanding \$501,401.62 in damages alleged to have been caused by Mr. Cornelson's assault and  
 2 battery. Dkt. 19-1.

3 In this case, Allstate seeks a declaration that it has "no obligation to provide coverage or  
 4 a defense to Joshua Cornelson and 'Jane Doe' Cornelson, husband and wife, in regard to claims  
 5 asserted against them" by Mr. Ortega Carrillo in the underlying case. Dkt. 1, at 9. Allstate  
 6 further seeks a declaration that Mr. Ortega Carrillo "is owed nothing in regard to insurance  
 7 indemnity on the claims he has alleged with respect to the coverages allowed under the policy."  
 8 *Id.* Allstate attached a copy of the policy to its complaint. Dkt. 1-2. Joshua Cornelson is listed  
 9 as the insured. Dkt. 1-2, at 4. The policy defines "you" and "your" as "the person listed under  
 10 named insured(s) on the policy declarations as the insured and that person's resident spouse."  
 11 Dkt. 1-2, at 13. It also defines "insured persons" as "you and, if a resident of your household: a)  
 12 any relative; and b) any dependent person in your care." *Id.*

13 On February 11, 2022, the Cornelsons filed a complaint in the Lower Elwha Klallam  
 14 Tribal Court ("Tribal Court") seeking a declaration that the Tribal Court has jurisdiction and that  
 15 Allstate is under a duty to defend and indemnify them in the dispute with Mr. Ortega Carrillo.  
 16 *Cornelson v. Allstate Indemnity Co. et. al.*, Lower Elwha Klallam Tribal Court case number  
 17 2022-CV-0009; Complaint Filed in this case at Dkt. 29-1, at 2. That complaint asserts that Ms.  
 18 Cornelson brings the case "in her personal capacity and on behalf of her Lower Elwha Klallam  
 19 marital community." *Id.*

20 On February 28, 2022, this Court denied the Cornelsons' motion to dismiss for lack of  
 21 subject matter jurisdiction (based on the amount in controversy). Dkt. 35.

22 The motion to dismiss for failure to exhaust tribal court remedies argues that this Court  
 23 should dismiss (or stay) this case in order to give the Tribal Court an opportunity to rule on  
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1 whether it has jurisdiction. Dkt. 28. Allstate opposes the motion and argues that the Tribal  
 2 Court plainly lacks jurisdiction over Allstate regarding this dispute and exhaustion is not  
 3 required. Dkt. 43. A reply was filed (Dkt. 44) and the motion is ripe for consideration.

## 4 II. DISCUSSION

### 5 A. EXHAUSTION OF TRIBAL COURT REMEDIES

6 “Tribal authority over the activities of non-Indians on reservation lands is an important  
 7 part of tribal sovereignty.” *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987). “Civil  
 8 jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited  
 9 by a specific treaty provision or federal statute.” *Id.* Comparatively, “absent a different  
 10 congressional direction, Indian tribes lack civil authority over the conduct of nonmembers on  
 11 non-Indian land within a reservation, subject to two exceptions.” *Strate v. A-1 Contractors*, 520  
 12 U.S. 438, 446 (1997).

13 A tribe may regulate, through taxation, licensing, or other means, the activities of  
 14 nonmembers who enter consensual relationships with the tribe or its members,  
 15 through commercial dealing, contracts, leases, or other arrangements. A tribe may  
 16 also retain inherent power to exercise civil authority over the conduct of non-  
 Indians on fee lands within its reservation when that conduct threatens or has  
 some direct effect on the political integrity, the economic security, or the health or  
 welfare of the tribe.

17 *Montana v. United States*, 450 U.S. 544, 565 (1981). The *Montana* Court identified “fee lands”  
 18 as lands within the reservation owned by non-Indians. *Id.*

19 The Cornelson motion to dismiss should be granted, in part, and this case should be  
 20 stayed to give the Tribal Court an opportunity to consider whether it has jurisdiction over this  
 21 dispute. The events in question are alleged to have occurred on reservation trust land, not on  
 22 “non-Indian land.” “Federal policy supporting tribal self-government directs a federal court to  
 23 stay its hand in order to give the tribal court a full opportunity to determine its own jurisdiction.”

1     *Iowa Mut.*, at 16 (*internal quotation marks and citations omitted*). The case should be stayed,  
 2 not dismissed, because exhaustion of tribal remedies is a matter of comity, not of jurisdiction.  
 3 *Id.*, at 16. This Court makes no finding regarding whether the Tribal Court has jurisdiction over  
 4 this dispute.

5                 Allstate argues that under *Strate*, the two exceptions announced in *Montana* don't apply.  
 6 Allstate fails to recognize that *Strate* and the *Montana* line of cases don't apply because each of  
 7 those cases involved activities by non-Indians on non-Indian fee land (or the functional  
 8 equivalent) not on Indian trust land as is the case here. *Strate* involved a car accident between  
 9 two non-Indians on a North Dakota state highway that ran through an Indian reservation. The  
 10 Court found that "the right-of-way North Dakota acquired for the State's highway renders the  
 11 6.59-mile stretch equivalent, for nonmember governance purposes, to alienated non-Indian land."  
 12 *Id.*, at 454. The *Strate* Court explicitly stated that it "express[ed] no view on the governing law or  
 13 proper forum when an accident occurs on a tribal road within a reservation." *Id.*, at 442.  
 14 *Montana* concerned whether non-tribal regulations applied to non-Indians on alienated non-  
 15 Indian land within the reservation. Neither of these cases is helpful in determining whether this  
 16 Court should wait until the Tribal Court has decided whether it has jurisdiction over this dispute.

17                 In arguing that the Tribal Court does not have jurisdiction over this dispute, Allstate  
 18 points to the policy's forum selection clause, which provides that lawsuits related to the policy  
 19 shall be brought "only in a state or federal court in which the residence premises is located."  
 20 Dkt. 43, at 7. Arguably, the Tribal Court's jurisdiction is a different question than whether it is  
 21 the proper forum for this dispute. "[W]here, as here, the tribal exhaustion doctrine applies  
 22 generally to a controversy, an argument that a contractual forum-selection clause either dictates  
 23 or precludes a tribal forum should not be singled out for special treatment, but should initially be  
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1 directed to the tribal court.” *See Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous.*  
 2 *Auth.*, 207 F.3d 21, 33 (1st Cir. 2000); *Snowbird Const. Co., Inc. v. United States*, 666 F. Supp.  
 3 1437, 1444 (D. Idaho 1987)(holding that tribal court should be the first to determine whether it  
 4 was the proper forum when contract at issue specified that disputes would be heard in Idaho state  
 5 courts). The Tribal Court should be given the opportunity to consider whether it is the  
 6 appropriate forum before this Court considers the issue.

7 “[W]hen a colorable claim of tribal court jurisdiction has been asserted, a federal court  
 8 may (and ordinarily should) give the tribal court precedence and afford it a full and fair  
 9 opportunity to determine the extent of its own jurisdiction over a particular claim or set of  
 10 claims.” *Id.*, at 31. This case should be stayed until the Tribal Court has an opportunity to  
 11 determine whether it has jurisdiction over this dispute. The parties should be ordered to file a  
 12 status report within 30 days of a decision from the Tribal Court as to whether it has jurisdiction  
 13 over this case, and in any event, by June 24, 2022.

#### 14           B. ADDITIONAL MATTERS

15       In his reply, Mr. Cornelson indicates that if it becomes necessary for him to respond to a  
 16 motion for summary judgment before his criminal trial takes place, he will move for a stay of  
 17 this case so that he does not waive his Fifth Amendment right against self-incrimination. Dkt.  
 18 44, at 3 n.4. At the time the parties file their status report, Mr. Cornelson should include an  
 19 update for this Court on the criminal proceedings.

#### 20           III. ORDER

21       Therefore, it is hereby **ORDERED** that:

22       • Allstate’s Motion for Voluntary Dismissal pursuant to FRCP 41(a)(2) as to  
 23           Defendant “Jane Doe” Cornelson Only (Dkt. 33) **IS GRANTED**;

- 1                   ○ Allstate's claims against Mrs. Cornelson **ARE DISMISSED WITHOUT**  
2                   **PREJUDICE;**
- 3                   ● The Cornelsons' Motion to Dismiss for Lack of Subject Jurisdiction (Dkt. 28) **IS**  
4                   **DENIED**, to the extent they move to dismiss the case, and **GRANTED** to the  
5                   extent they move to stay this case;
  - 6                   ○ This case **IS STAYED** until the Tribal Court has an opportunity to  
7                   determine whether it has jurisdiction over this dispute.
  - 8                   ○ The parties **ARE ORDERED** to file a status report within 30 days of a  
9                   decision from the Tribal Court as to whether it has jurisdiction over this  
10                  case, and in any event, by **June 24, 2022**; and
  - 11                  ○ Mr. Cornelson **IS ORDERED** to include an update informing this Court  
12                  of the criminal proceedings in the parties' status report. This update is  
13                  also due by **June 24, 2022**.

14                  The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
15                  to any party appearing *pro se* at said party's last known address.

16                  Dated this 23<sup>rd</sup> day of March, 2022.



17                  ROBERT J. BRYAN  
18                  United States District Judge  
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